

ORIGINAL



BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER  
Chairman

WILLIAM A. MUNDELL  
Commissioner

MIKE GLEASON  
Commissioner

KRISTIN K. MAYES  
Commissioner

BARRY WONG  
Commissioner

2006 OCT 27 P 4:12

Arizona Corporation Commission

DOCKETED

OCT 27 2006

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED BY



STAFF of the Utilities Division,

Complainant,

vs.

ARROYO WATER COMPANY, INC.

Respondents.

DOCKET NO. W-04286A-06-0399

AMENDED COMPLAINT AND  
PETITION FOR ORDER TO SHOW  
CAUSE

Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"), for its Complaint and Petition for Order to Show Cause ("OSC") against Arroyo Water Company, Inc. ("Arroyo" or "Company"), an Arizona Public Service Corporation, alleges:

**JURISDICTION**

1. The Commission has jurisdiction to hear complaints against public service corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

2. Arroyo is a Public Service Corporation as defined by Article XV, § 2 of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

3. Arroyo has operated under a Certificate of Convenience and Necessity ("CC&N") which was originally granted in Decision No. 49584, dated January 5, 1979. The CC&N was conditioned upon compliance with Arizona Law and the Commission's Rules.

...

1           4.     On June 13, 2001, Staff of the Arizona Corporation Commission ("Staff") filed a  
2 Complaint against Arroyo in Docket No. W-03672A-01-0474. A Procedural Order was filed on  
3 September 13, 2004, which ordered that Kyle and Kacy Parker shall file, by no later than October 15,  
4 2004, an application for sale of assets and for transfer of the current CC&N for Arroyo Water  
5 Company, Inc. Staff should provide appropriate guidance to the Parkers to assist in filing the  
6 application, and the Parkers shall cooperate fully with Staff's requests for information related to the  
7 application. It was further ordered that Richard Williamson, on behalf of Arroyo Water Company,  
8 Inc., shall also cooperate fully with Staff's requests for information given Mr. Williamson's current  
9 status as the owner of record of Arroyo Water Company, Inc., which holds the CC&N, and as the  
10 Certified Operator of the Company.

11                                   **FACTUAL BACKGROUND**

12           5.     On October 19, 2004, Staff received an application from Kacy Parker requesting  
13 issuance of a new CC&N and approval of the sale of assets to Kacy Parker dba Arroyo Water  
14 Company.

15           6.     A Procedural Order issued on April 19, 2005, instructed Staff to file a Staff Report in  
16 the matter by June 3, 2005. On June 1, 2005, Staff filed a request for extension of time to file that  
17 Staff Report and on June 2, 2005, a Procedural Order granted Staff an extension on the Staff Report  
18 until June 24, 2005 and called for Arroyo to file a response to the Staff Report by July 11, 2005.

19           7.     On June 24, 2005, Staff filed its Staff Report in the application for CC&N and Sale of  
20 Assets. Arroyo failed to file a response to the Staff Report by the July 11, 2005 date ordered by the  
21 Commission.

22           8.     In its June 24, 2005 Staff Report, Staff stated that additional information was needed  
23 to determine whether to grant the requested CC&N and Approval of the Sale of Assets to Mr. Parker.  
24 The Staff Report recommended that the Company provide eight pieces of additional information.

- 25                   1)     A water use data sheet.
- 26                   2)     Requests for service from property owners in the service territory covered by  
27                           the CC&N application which are outside the original Sheer Speed CC&N area.
- 28                   3)     Evidence or an affidavit that proper notice was provided to the affected  
                         customers regarding the application for CC&N and Sale of Assets.

- 1           4)     Utility Annual Reports for years 2003 and 2004.
- 2           5)     Information about the proposed new well and the proposed additional storage.
- 3                 Additionally, provide description of what Arroyo plans to do to meet
- 4                 production and storage needs and the timetable for completion.
- 5           6)     Arsenic concentration levels for the existing well and the proposed well.
- 6           7)     Gila County franchise approval for the area being requested.
- 7           8)     Certification, receipt and/or cancelled check from Gila County Treasurer's
- Office that all liens have been paid.

8           9.     On February 10, 2006, a procedural order outlined that Arroyo had failed to respond to  
9 the June 24, 2005 Staff Report and again ordered that the Company file a response. The Procedural  
10 Order gave another deadline, February 24, 2006, for Arroyo's response.

11          10.    On February 22, 2006, Staff received a very short letter from the Company stating that  
12 it had started to compile the data, but needed more time. The Company indicated that it was going to  
13 docket the letter, but this apparently never happened and no amount of additional time was specified.  
14 In verbal discussions, the Company indicated that it would have the information by May 1, 2006, but  
15 no information was provided by that date.

16          11.    A Procedural Order was issued on May 17, 2006, due to the Company's failure to  
17 provide the information necessary for Staff to make its recommendation. The Procedural Order  
18 required Staff to file a recommendation for appropriate action to be taken in this matter including, but  
19 not limited to, pursuit of an Order to Show Cause for failure to provide the additional information  
20 requested by Staff and failure to comply with the Administrative Law Judge's directives to respond to  
21 the Staff Report by providing the required information. Although the date for Staff's filing was  
22 stated as June 1, 2006, Staff requested and was granted an extension until June 15, 2006.

23          12.    On May 31, 2006, Staff received a filing from Arroyo which was purportedly to  
24 demonstrate that the Company was trying to comply with the eight items with which the Commission  
25 had ordered the Company to respond. Upon review, however, the filing consisted of correspondence  
26 on Arroyo's attempts to determine how to proceed rather than the finalized data filings that were  
27 responsive to the eight outlined items from the June 24, 2005 Staff Report. The only items in the  
28 filing that appeared to be responsive to the Staff Report were a customer notification related to item

1 number 3 and a single request for service relating to item number 2. The Company indicated that  
2 there were two written requests for service and a number of verbal requests for service. As the  
3 Company received two requests for service, Staff is missing evidence of one and still the filing for  
4 item number 2 would not be complete. On June 8, 2006, Staff received another filing from the  
5 Company with similar information as the May 31, 2006 filing. It did not include any data satisfying  
6 any of the remaining items required by Staff. Therefore, based on Staff's review, the Company failed  
7 to provide the necessary documentation for the following items:

8	Item Number 1	-	Water Use Data Sheet.
9	Item Number 2	-	One Incomplete Request for Service
10	Item Number 4	-	Annual Reports for years 2003 and 2004.
11	Item Number 5	-	Information about Proposed Well, Storage and Plan.
12	Item Number 6	-	Arsenic concentration Levels.
13	Item Number 7	-	Gila County Franchise Approval.
14	Item Number 8	-	Gila County Treasurers Office Certification of lien payment.

15 13. The June 24, 2005 Staff Report indicated that the additional information requested was  
16 necessary for Staff to make a recommendation in the CC&N and Sale of Assets case. More than one  
17 year has elapsed since the Staff Report was filed and the Company was required to file a response.  
18 This complaint and petition for order to show cause was filed as per the May 17, 2006 Procedural  
19 Order and because the Company has failed to provide the information required by Staff and has failed  
20 to respond to Procedural Orders directing such a response.

21 14. Since January 1, 2005, Staff has received 18 complaints from customers of Arroyo  
22 regarding billing issues, inability to contact the Company, low pressure and water quality. As of  
23 October 23, 2006, there has been no response from the Company regarding any of these complaints.

24 15. On July 14, 2006, the Arizona Department of Environmental Quality ("ADEQ")  
25 issued a drinking water compliance status report for Arroyo. The report cites major deficiencies in  
26 monitoring and reporting, operation and maintenance, and overall compliance. Specifically, these  
27 items include:

- 28 a. Lack of Adequate Storage
- b. No Certified Operator
- c. Consumer confidence reports for calendar years 2002, 2003, 2004 and 2005.
- d. Required baseline lead and copper monitoring
- e. Require annual nitrate analyses for 2004 and 2005.

1 Because of the monitoring deficiencies, ADEQ cannot determine if the system is  
2 currently delivering water that meets water quality standards required by Arizona Administrative  
3 Code, Title 18, Chapter 4.

4 16. Staff has attempted to contact the Company by phone, mail and email on numerous  
5 occasions with little or no response. In an attempt to once again provide assistance, Staff met with  
6 Mr. Kacy Parker on July 13, 2006. At this meeting, Staff outlined once again all of the items in the  
7 June 24, 2005 Staff Report that still needed to be addressed. As of October 23, 2006, the Company  
8 has yet to file the required information and further attempts to contact the Company have been  
9 unsuccessful.

### 10 **COMPLAINT**

#### 11 **Count One**

#### 12 **(Violation of Commission Decision)**

13 17. Staff incorporates the allegations of paragraphs 1-16 into this count.

14 18. Per multiple procedural orders in this docket, Arroyo was ordered to provide a  
15 response to the request for additional information outlined in the June 24, 2005 Staff Report. After  
16 more than a year, the Company has failed to provide the required information.

17 19. The failure of Arroyo to provide the required response to the Staff Report constitutes a  
18 violation of the Administrative Law Judge's procedural order directives and therefore Commission  
19 Decision.

#### 20 **Count Two**

#### 21 **(Violation of A.R.S. § 40-204)**

22 20. Staff incorporates the allegations of paragraphs 1-19 into this count.

23 21. Under A.R.S. § 40-204, public service corporations are required to provide all  
24 reporting information required by the Commission in the manner in which the Commission requires  
25 it:

26 "Every public service corporation shall furnish to the commission, in the form and  
27 detail the commission prescribes, tabulations, computations, annual reports,  
28 monthly or periodical reports of earnings and expenses, and all other information  
required by it to carry into effect the provisions of this title and shall make  
specific answers to all questions submitted by the Commission."

22. Per various Commission orders, Arroyo has been required for over a year to provide eight separate pieces of information originally outlined in the June 24, 2005 Staff Report. Complete information has not been provided at this time. The Company has proven difficult to contact and the interval of time since the request was made has been unacceptable.

23. The failure to provide the Company response to the individual items in the Staff Report represents a violation of A.R.S. § 40-204, in that Arroyo failed to provide information in appropriate detail, and failed to make specific answers to all the questions submitted by the Commission.

**Count Three**

**(Violation of Commission Decision)**

24. Staff incorporates the allegations of paragraphs 1-23 into this count.

25. Pursuant to Arizona Revised Statutes Section 40-204 and Arizona Administrative Code R14-2-411.D.4, all public service corporations in Arizona are required to file a Utilities Annual report on or before April 15 of each year for the preceding calendar year.

26. Arroyo has failed to provide the Utilities Division Annual Report since the year 2000. The Annual Reports are part of the eight items required in the Staff Report on June 24, 2005 and are therefore covered in Count One of this complaint.

27. The 2005 Annual Report has not been provided to the Commission and the failure to provide this report is not covered by any of the other Counts within this action.

28. The failure of Arroyo to provide the Annual Reports since 2000 represents a violation of both Arizona Revised Statutes Section 40-204 and Arizona Administrative Code R14-2-411.D.4.

**Count Four**

**(Violation of R14-2-411(A)(2))**

29. Staff incorporates the allegations of paragraphs 1-28 into this count.

30. A.A.C. R14-2-411(A)(2) requires utilities to: 1) "[m]ake a full and prompt investigation of all service complaints made by its customers, either directly or through the Commission;" 2) "[r]espond to the complainant and/or the Commission representative within five working days as to the status of the utility investigation of the complaint;" and 3) [n]otify the

1 complainant and/or the Commission representative of the final disposition of each complaint. Upon  
2 request of the complainant or the Commission representative, the utility shall report the findings of its  
3 investigation in writing.” Arroyo has failed to make a full and prompt investigation of all service  
4 complaints made by its customers, either directly or through the Commission. Arroyo has failed to  
5 report the findings of its investigation, if any, to the Commission. Arroyo has not responded within  
6 five working days to informal Commission complaints. Arroyos’ failure to respond to the  
7 complainant and/or the Commission Staff constitutes a violation of A.A.C. R14-2-411(A)(2).

8 **Count Four**

9 31. Staff incorporates the allegations of paragraphs 1-30 into this count.

10 32. Under Article XV, § 3 of the Arizona Constitution, the Commission may enter “orders  
11 for the convenience, comfort, safety, and preservation of the health” of the customers of a public  
12 service corporation. The Company’s continued failure to respond to as required by Commission  
13 Rules and Arizona Statutes to provide adequate service and issues of water quality requires an order  
14 by the Commission for the safety and preservation of health of Arroyos’ customers. Therefore, the  
15 Commission should order that a manager selected by Staff be appointed by the Commission as the  
16 interim manager (the “Manager”) of Arroyos’ water system until further order by the Commission,  
17 upon reasonable term and conditions agreed between the Manager and Staff, with full authority to  
18 conduct the business and affairs of Arroyo’ water system. Moreover, Arroyo should be ordered to  
19 cooperate with and indemnify, defend and hold harmless the Manager for all claims related to its  
20 management of Arroyo’s water system.

21 **RELIEF**

22 33. Wherefore Staff requests that the Commission issue an **ORDER TO SHOW CAUSE**  
23 directing Arroyo to appear and show cause:

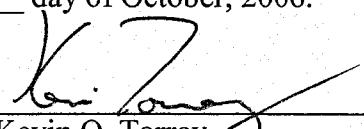
- 24 A. why its actions and compliance notification letters do not constitute a violation  
25 of Commission Decision via Procedural Order directives;  
26 B. why its actions do not represent a violation of A.R.S. § 40-204;  
27 C. why its actions do not represent a violation of A.A.C. R14-2-411(D)(4);  
28 D. why its actions do not represent a violation of A.A.C. R14-2-411(A)(2);

- 1 E. why its actions do not represent a violation of its obligations as a public service  
2 corporation;  
3 F. why a qualified Manager should not be appointed, as selected by Staff;  
4 G. why Arroyo should not be ordered to cooperate with and indemnify, defend  
5 and hold harmless the Manager;  
6 H. why other relief deemed appropriate by the Commission should not be ordered.

7 34. Staff further requests that after the conclusion of appropriate proceedings, a final  
8 **OPINION AND ORDER** be entered:

- 9 A. finding that the above mentioned entity has violated Commission Decision;  
10 B. finding that the above mentioned entity has violated A.R.S. § 40-204;  
11 C. finding that the above mentioned entity has violated A.A.C R14-2-411(D)(4);  
12 D. finding that the above mentioned entity has violated A.A.C. R14-2-411(A)(2);  
13 E. finding the Arroyo has violated its obligation as a public service corporation;  
14 F. ordering the appointment of a qualified Manager, selected by Staff;  
15 G. ordering Arroyo to cooperate with and indemnify, defend and hold harmless  
16 the Manager;  
17 H. imposing fines and penalties pursuant to Article XV, Section 19 of the Arizona  
18 Constitution and A.R.S. §§ 40-424 and 40-425 in an amount not less than \$100  
19 nor more than \$5,000 for each day of violation of Commission Statutes, Rules,  
20 Regulations or Orders;  
21 I. ordering such other relief as the Commission may find just and reasonable.

22 RESPECTFULLY SUBMITTED this 27<sup>TH</sup> day of October, 2006.

23   
24 Kevin O. Torrey  
25 Attorney, Legal Division  
26 Arizona Corporation Commission  
27 1200 West Washington Street  
28 Phoenix, Arizona 85007  
(602) 542-6031

29 The original and thirteen (13) copies  
30 of the foregoing were filed this  
31 27<sup>TH</sup> day of October 2006 with:

32 Docket Control  
33 Arizona Corporation Commission  
34 1200 West Washington Street  
35 Phoenix, Arizona 85007

1 Copy of the foregoing mailed this  
2 27<sup>TH</sup> day of October 2006, to:

3 Mr. Richard W. Williamson  
4 Arroyo Water Company, Inc.  
5 Post Office Box 231  
6 Young, Arizona 85554  
7 **(VIA CERTIFIED AND REGULAR MAIL)**

8 Kacy Parker dba Arroyo Water Company  
9 HC 6, Box 1048-H  
10 Payson, Arizona 85541  
11 **(VIA CERTIFIED AND REGULAR MAIL)**

12 Mr. Christopher C. Kempley  
13 Chief Counsel, Legal Division  
14 Arizona Corporation Commission  
15 1200 West Washington Street  
16 Phoenix, Arizona 85007

17 Mr. Ernest G. Johnson  
18 Director, Utilities Division  
19 Arizona Corporation Commission  
20 1200 West Washington Street  
21 Phoenix, Arizona 85007

22 Ms. Lyn Farmer  
23 Administrative Law Judge, Hearing Division  
24 Arizona Corporation Commission  
25 1200 West Washington Street  
26 Phoenix, Arizona 85007

27 monica A. Martinez  
28

1                   **BEFORE THE ARIZONA CORPORATION COMMISSION**

2   **COMMISSIONERS**

3 JEFF HATCH-MILLER - Chairman  
4 WILLIAM A. MUNDELL  
5 MIKE GLEASON  
6 KRISTIN K. MAYES  
7 BARRY WONG

8 STAFF of the Utilities Division,

Complainant,

9 vs.

10 ARROYO WATER COMPANY, INC.

11 Respondents.

DOCKET NO. W-04286A-06-0399

**AMENDED COMPLAINT AND  
PETITION FOR ORDER TO SHOW  
CAUSE**

12  
13           The Arizona Corporation Commission ("Commission"), hereby issues this Order to Show  
14 Cause against Arroyo Water Company.

15                   **FINDINGS OF FACT**

16           The Arizona Corporation Commission (Commission), for its Complaint, alleges as follows:

17                   **I**

18           The Commission is an agency of the State of Arizona, existing by virtue of Article 15 of the  
19 Arizona Constitution.

20                   **II**

21           Respondents are public service corporations as defined by Article 15, § 2 of the Arizona  
22 Constitution, and were issued Certificates of Convenience and Necessity in accordance with Arizona  
23 Revised Statutes § 40-281.

24                   **III**

25           As public service corporations, Respondents are subject to the jurisdiction of the Commission  
26 with regard to the matters herein alleged.

27 ...

28 ...

**IV**

This Complaint is initiated and authorized pursuant to Arizona Revised Statutes, §§ 40-202, 40-204, 40-425, 40-426, and Arizona Administrative Code R14-2-411.D.4, R14-2-510.G.4, R14-2-610.D.4., R14-2-907.A., R14-2-1011.A., and R14-2-1115.F.

**V**

Investigation by the Commission's Staff (Staff) reveals and the Commission alleges that Respondents have violated Arizona Revised Statutes and Commission Rules. The Commission alleges the following in support of its claim:

- A. Pursuant to Arizona Revised Statutes §§ 40-202(L), all public service corporations in Arizona are required to comply with every order, decision, rule or regulation made by the Commission.
- B. Despite repeated attempts by the Staff to persuade Respondents to provide the requested documentation, Respondents have failed to do so and are thus in violation of Arizona Revised Statutes §§ 40-202(L).
- C. Pursuant to Arizona Revised Statutes § 40-202(L), Respondents are in contempt of the Commission for their failure to comply with the aforementioned rules and requirements of the Commission.

**VI**

The violations of Respondents to the aforementioned rules and requirements, as alleged herein, constitutes grounds to assess a civil penalty against Respondents pursuant to Arizona Revised Statutes §§ 40-424 and 40-425, in an amount not less than \$100 nor more than \$5,000 for each violation, and/or revoke respondents certificate of convenience and necessity.

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**ORDER**

THEREFORE, IT IS ORDERED, that Respondents appear before the Arizona Corporation Commission at a time and place designated by the Commission's Hearing Division and show cause why the Commission should not find Respondents in violation and contempt of Arizona Laws and Commission rules, and show cause why the Commission should not assess against Respondents penalties as provided in Arizona Revised Statutes §§ 40-424 and 40-425, or cancel the respondents certificate of convenience and necessity.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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CHAIRMANCOMMISSIONER

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COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

---

BRIAN C. McNEIL  
Executive Director

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

EGJ:CCK/KOT/daa

1 SERVICE LIST FOR: DOCKET NO. W-04286A-06-0399 ET.AL.

2 Mr. Richard W. Williamson  
3 Arroyo Water Company, Inc.  
4 Post Office Box 231  
5 Young, Arizona 85554

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